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**IN THE
COURT OF APPEALS OF INDIANA**

ALLEN ARNETT,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0605-CR-266
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Robinette, Commissioner
Cause No. 49G03-0504-FC-062791

MARCH 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Allen Arnett was convicted by a jury of the Class D felony of battery and the Class A misdemeanor of trespass. Arnett was acquitted on two counts of intimidation. He was also adjudicated a habitual offender, which was tried to the bench.

ISSUES

Arnett states the issues as:

- I. Did the prejudicial effect of otherwise hearsay testimony regarding prior bad acts by Arnett, admitted pursuant to the State's 404(B) motion over Arnett's objection, outweigh the testimony's probative value?
- II. Did the trial court sentence Arnett to a term of imprisonment that was inappropriate under the circumstances?

FACTS

Joe Bruce, who owned the Good Times Bar and Restaurant, ordered Arnett to leave and never come back after Arnett called a two customers, a mother and daughter, whores. As Arnett was leaving he told Bruce, "I'll kill your ass."

Arnett returned to the bar that evening, and a waitress by the name of Amanda Walters told him to leave because he was not supposed to be in the bar. Bruce saw Arnett and ordered him out of the bar. Before that, however, Bruce retrieved a handgun and placed it in his trouser pocket. Bruce told Arnett to leave but Arnett refused to do so. Bruce noticed that Arnett was armed with a knife. Arnett walked out of the bar with Bruce following him. Bruce reiterated his order for Arnett to completely leave the premises. Arnett pulled out his knife and stabbed at Bruce's abdomen; however, Bruce

blocked the attack with his arm. Bruce pulled out his gun but before he could shoot, a customer stopped him because Arnett was running away. Bruce suffered a cut on his arm, but he refused to go to the hospital.

Three days later, Walters received a call from Arnett who threatened to kill her if she showed up in court.

Prior to trial, the State filed a motion to use Evid.R. 404(b) evidence. The motion covered those events relating to the removal of Arnett from the bar that afternoon, in particular when Arnett called the two women whores. It was alleged that this evidence would be used to show intent, knowledge, identity, and the absence of mistake or accident. The trial court granted the motion.

Additional facts will be disclosed as needed.

DISCUSSION AND DECISION

Issue I.

A trial court's evidentiary rulings are reviewed for an abuse of discretion, which occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Samaniego-Hernandez v. State*, 839 N.E.2d 798, 802 (Ind. Ct. App. 2005). In determining the admissibility of extrinsic act evidence under Evid.R. 404(b), courts must first determine whether the evidence is relevant to a matter at issue other than the person's propensity to perform a wrongful act, and the court then must balance the probative value of the evidence against its prejudicial effect pursuant to Evid.R. 403. *Id.* Evidence of uncharged misconduct which is probative of the

defendant's motive, and which is inextricably bound up with the charged crime is properly admissible under Evid.R. 404(b). *Id.*

The trial court has wide latitude in weighing the probative value of the evidence against the possible prejudice of its admission. *Saunders v. State*, 724 N.E.2d 1127, 1131 (Ind. Ct. App. 2000).

Evidence of motive is always relevant in the proof of a crime. *Wilson v. State*, 765 N.E.2d 1265, 1270 (Ind. 2002). Moreover, where a relationship between parties is characterized by frequent conflict, evidence of the defendant's prior assaults and confrontations with the victim may be admissible. *Iqbal v. State*, 805 N.E.2d 401, 408 (Ind. Ct. App. 2004).

Arnett was charged in four counts: Count I is the Class C felony of battery on Joe Bruce; Count II is the Class D felony of intimidation of Joe Bruce; Count III is the Class D felony of intimidation of Amanda Walters; and, Count IV is the Class A misdemeanor of trespass on Joe Bruce's property.

Arnett cites the committee commentary to Evid.R. 404(B) that as a general rule, evidence of matters not disputed, especially prejudicial evidence, should not be readily admitted under 404(B). Arnett says that he was willing to stipulate that Bruce denied him entry to the bar and, as a result, the matter was not disputed. While it is understandable that Arnett would want to minimize the incident, we are of the opinion that cases decided by the Court of Appeals and the Indiana Supreme Court take precedence over the committee's commentary.

Evid.R. 404(B) evidence is excluded only when it is introduced to prove the “forbidden inference” of demonstrating the defendant’s propensity to commit the charged crime. *Saunders*, 724 N.E.2d at 1130-31. Evidence of uncharged misconduct which is probative of the defendant’s motive and which is “inextricably bound up” with the charged crime is properly admissible under Evid.R. 404(B). Arnett’s remark to the two women that they were whores is “inextricably bound up” as it relates to his motive.

Issue II

Arnett was sentenced to the maximum of eight years on the Class C felony of battery, six years executed, two years suspended with one year on probation. Arnett was sentenced to a concurrent term of one year on the trespass count. The Class C felony was enhanced by five years as a result of the habitual offender adjudication. Arnett makes no argument concerning mitigating or aggravating circumstances.

Our Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, this Court finds that the sentence is inappropriate in light of the offense and the character of the offender. Indiana Appellate Rule 7(B). Arnett posits that in light of the nature of the offense and the character of the offender his sentence is inappropriate.

Insofar as Arnett’s App.R 7(B) argument is concerned:

This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the *class* of offenders and offenses that warrant the maximum

punishment. But such class encompasses a considerable variety of offenses and offenders.

Buchanan, id. (citations omitted; original emphasis.)

In considering the character of the offender, we note the eight pages in his pre-sentencing report about his criminal history that spans a period from 1988 until 2005, and we find Arnett's character wanting. The nature of the offense, the attacking and wounding of a fellow human with a knife, is serious enough to warrant the sentence that Arnett received.

CONCLUSION

The trial court did not err in granting the State's Evid.R. 404(B) motion. The sentence Arnett received is appropriate. Judgment affirmed.

KIRSCH, C.J., concurs.

VAIDIK, J., concurs in result.